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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161817
Party	Plaintiff Nextel Communications, Inc. Nextel Communications, Inc. ,
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE**  
**THE TRADEMARK TRIAL AND APPEAL BOARD**

NEXTEL COMMUNICATIONS, INC.,	)	
	)	
Opposer,	)	
	)	Opp. No.: 91/161,817
v.	)	App. No.: 78/235,618
	)	Pot. Mark: SENSORY MARK
MOTOROLA, INC.,	)	(911 Hz tone)
	)	
Applicant.	)	
	)	

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

## OPPOSER'S NOTICE OF FILING OF TESTIMONY

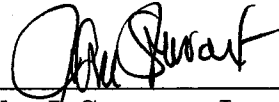
To: John T. Gabrielides  
Thomas Williams  
BRINKS HOFER GILSON & LIONE  
P.O. Box 10395  
Chicago, IL 60610

Opposer, Nextel Communications, Inc., herewith files the transcript of the Evidence Deposition of Mr. Rick Rasmussen taken in connection with this proceeding on August 24, 2006, along with Opposer's Exhibit No. 1, pursuant to 37 C.F.R. § 2.123.

This transcript has been certified by the officer taking the deposition and it and the exhibit have been prepared for filing pursuant to 37 C.F.R. § 2.123(f).

January 16, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John F. Stewart, Jr.", written over a horizontal line.

John F. Stewart, Jr.  
Attorney for Opposer

**CROWELL & MORING LLP**  
1001 Pennsylvania Avenue, NW  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the OPPOSER'S NOTICE OF FILING OF TESTIMONY was served on counsel for the Applicant, this 16<sup>th</sup> day of January, 2007, by sending same via e-mail and First Class Mail, postage prepaid, to:

John T. Gabrielides  
Thomas Williams  
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Chicago, IL 60610

A handwritten signature in black ink, appearing to read 'William J. Sauers', is written over a horizontal line.

William J. Sauers

1 IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

2 Civil Division

3 -----:

NEXTEL COMMUNICATIONS, :

4 :

Plaintiff, :

5 :

v. :

6 :

MOTOROLA, INC., :

7 :

Defendant. :

8 :

9 -----:

Washington, D.C.

10 Thursday, August 24th, 2006

11

12 Deposition of:

13 RIK RASMUSSEN,

14 Called for oral examination by counsel for  
15 plaintiff, pursuant to notice, at the offices of Crowell  
16 Moring, 1001 Pennsylvania Avenue, N.W., Washington, D.C.,  
17 beginning at 1:35 p.m, before Teague Gibson of Capital  
18 Reporting, a Notary Public.

19

20 \* \* \* \* \*

21

22

 ORIGINAL

1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFF:

3 JOHN I. STEWART, JR., ESQ.

4 WILLIAM SAUERS, ESQ.

5 Crowell Moring

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10 ON BEHALF OF THE DEFENDANT:

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22

1 C O N T E N T S

2	EXAMINATION BY:	PAGE
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4	MR. WILLIAMS	32
5	RASMUSSEN DEPOSITION EXHIBITS:	PAGE:
6	1 Resume	5

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12

13 (Exhibits retained by counsel)

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22

1 P R O C E E D I N G S

2 WHEREUPON:

3

4 RIK RASMUSSEN,

5 called for examination, having been duly sworn to  
6 tell the truth, the whole truth and nothing but the  
7 truth, testified as follows:

8

9 EXAMINATION BY COUNSEL FOR PLAINTIFF

10

11 BY MR. STEWART:

12 Q Would you please state your name?

13 A My name is Henrik Rasmussen, but I use the  
14 nickname Rik.

15 Q Spelled?

16 A R-I-K.

17 Q And what is your current address?

18 A 1031 Jones Wind, in Wake Forest, North  
19 Carolina.

20 Q What's your current position,  
21 Mr. Rasmussen?

22 A I'm the radio system manager, an employee



1 of the City of Durham, North Carolina and I manage a  
2 radio system for them.

3 Q Are you here today in your official  
4 capacity?

5 A No, I'm just here as an individual.

6 (Rasmussen Exhibit No. 1 was marked)

7 Q I'd like to hand you a document that I  
8 would ask to have marked as Rasmussen Exhibit 1.  
9 Mr. Rasmussen, is this your resume?

10 A Yes, it is.

11 Q I see at the top you've identified Radio  
12 system manager. How long have you been in that  
13 position?

14 A Since 1997.

15 Q About when in 1997?

16 A October.

17 Q And what are your responsibilities in that  
18 position?

19 A I manage a division of the City government  
20 that we call the Communications Maintenance  
21 Division. I have seven employees that are  
22 responsible to me. Our primary function is to

1 manage and maintain the City and it's a shared  
2 system used by the City and County 800 megahertz  
3 two-way radio system.

4 We also in addition to managing and  
5 maintaining that system we also manage and maintain  
6 what we call the user units, portable radios, mobile  
7 radios and base stations that the various user  
8 agencies use on that radio systems and we have other  
9 equipment that we maintain for the various agencies  
10 in the City and the County governments and some  
11 State government agencies. We also maintain the  
12 radio dispatch systems in the 911 center for Durham  
13 County.

14 Q Are you also involved with procuring new  
15 two-way radio equipment?

16 A Yes, I determine what is needed and then  
17 specify that equipment that is to be purchased,  
18 basically have the final say so on what we use on  
19 the system.

20 Q Do you have contact in this position with  
21 users of the system?

22 A Yes, we have about 3000 individual radio

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1 users on the system working for the various agencies  
2 within the City and the County governments that  
3 includes all the public safety agencies but does  
4 also include Public Works Department, Sanitation,  
5 all the various functions of local government so  
6 they come to us with their communications needs, we  
7 sit down and talk to them about what their needs are  
8 and then look for ways to solve those needs that  
9 they have. We either purchase for them or provide  
10 them the information allowing them to purchase the  
11 radios that they will use on the system. We then  
12 program the radios so that they're suitable for  
13 their use, deliver the radios to them and either  
14 directly instruct the end-user or more often will  
15 instruct someone in their department who then trains  
16 the users within the department on the proper use of  
17 the equipment.

18 Q Are you yourself a user of the system?

19 A I am. In my own little division we use  
20 the system ourselves for our own internal  
21 communications and so during my normal workday I  
22 have one of the radios with me at all times.

1           Q     Look back as Rasmussen Exhibit 1. I want  
2     to skip over the next listing and go to the listing  
3     for Audiovox. You see that?

4           A     Yes.

5           Q     What was your job with Audiovox?

6           A     I worked with them as a regional sales  
7     manager responsible for a 10-state region in the  
8     southeast and really had two roles and one role I  
9     had was to work with the cellular telephone carriers  
10    in that area. I would go in and demonstrate new  
11    equipment to them and then basically try to convince  
12    them to use our telephones in their sales to their  
13    customers and then in that function I would also do  
14    sales training classes for their sales people and  
15    also did do some training for the technical staff  
16    that they would have on how to program the phones  
17    and that sort of thing. But the other role I had  
18    with Audiovox was, in my region, I was responsible  
19    for retail store outlets that we opened up under a  
20    name Quintex, these were walk-in retail type stores  
21    similar to what you see today where the customers  
22    would come in and purchase their cellular telephone

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1 and the service and we function as an agent for the  
2 carriers so we had a dual relationship with them. I  
3 was the regional manager for this 10-state region I  
4 had area managers who answered to me and they in  
5 turn hired the store managers for the stores in  
6 their area and then those store managers would hire  
7 the individual sales people.

8 Q Moving to the next listing, Cellular One  
9 of the Triangle. Would you please describe what  
10 your position was with Cellular One?

11 A I was the sales manager for Cellular One  
12 which was a cellular telephone carrier serving the  
13 Raleigh/Durham market. I was actually responsible  
14 for the eastern half of North Carolina. Our primary  
15 effort was in the Raleigh/Durham market. I hired  
16 and trained the sales people and would often  
17 accompany them on sales calls. I worked with the  
18 vendors.

19 Q Go back to the second listing Direct Call,  
20 Inc. Would you describe what that business was?

21 A Direct Call, Incorporated was and  
22 continues to be, the company's still there, I'm

1 just -- I left them in '97 to go to work with the  
2 city. Direct Call, Incorporated is a company that  
3 owns and operates two-way radio systems which  
4 provide two-way radio service airtime to their  
5 customers, most of that is a type of system called  
6 trunked two-way radio and Direct Call, Incorporated  
7 is a company that sort of spun off from a earlier  
8 company that I founded prior to this time period  
9 here.

10 Q So how long were you involved with that  
11 business?

12 A Well, I returned to Direct Call in 1994 as  
13 it says here in a full-time capacity and remained in  
14 that role until 1997. When I left Direct Call to  
15 work with the City of Durham I continued to have a  
16 working relationship with Direct Call until about  
17 two years, maybe two and a half years ago when I  
18 gradually unwound that and eventually severed that  
19 connection all together.

20 Q What about prior to 1994?

21 A Well, in the late '70s, about 1979, I  
22 established a two-way radio shop that eventually

1 became incorporated I think around 1993 as  
2 Direct-Connect, Incorporated and in Direct-Connect I  
3 was involved in the two-way radios which at that  
4 point we were not involved in any kind of trunking  
5 systems but we had what were called conventional  
6 community repeaters and we built up a large number  
7 of those over a very sizable area in Piedmont of  
8 North Carolina and southern Virginia.

9           And eventually around 1986 I was  
10 approached by someone interested in buying a portion  
11 of that business at the same time I saw the cellular  
12 evolution coming and thought that might be a  
13 direction I wanted to get involved in. But I ended  
14 up breaking up the Direct-Connect businesses in  
15 several pieces and selling each one to a different  
16 person and I was in the satellite television  
17 business and that was back before we had the small  
18 dishes that we've got today. I sold that portion of  
19 the business to one company. We were installing  
20 office telephone systems, sold that to another  
21 company and we sole the radio shop, the repair  
22 business, to a company called Radio Communications

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1 Company in Kerry, North Carolina and I had basically  
2 a handshake agreement with the owner of that company  
3 to stay involved for about a year or so to help  
4 transition the customers to being serviced by this  
5 new company. But I did not sell the repeaters to  
6 them. We only sold them the shop business.

7 The repeaters, myself and a partner I had  
8 in that business who helped fund the growth of the  
9 repeaters, we then created a new corporation we  
10 called Direct Call, Incorporated and that business  
11 continued from that time until today to operate  
12 those repeaters.

13 And then when I returned to that business  
14 in 1994 I saw an -- one of the reasons I did return  
15 in '94 was because I saw an opportunity to take all  
16 of those many community repeaters we had which were  
17 each a standalone system and cluster them into  
18 groups of channels that allowed us to build trunked  
19 radio systems out of and I thought there would be a  
20 really good opportunity financially by doing that  
21 and that did turn out to be the case, actually was  
22 pretty lucrative.



1           Q     So did Radio Communications Company also  
2     provided trunked radio services?

3           A     They did, but they were using a different  
4     format than we ended up using at Direct Call and so  
5     when I did sell Radio Communications Company and my  
6     shop I stayed on with them for awhile. The role I  
7     had there was as a sales manager to hire and train  
8     sales people. And Radio Communications Company was  
9     operating what was known at that time by the name of  
10    GE, General Electric, they were in the two-way radio  
11    business. And Radio Communications Company operated  
12    a GE trunked two-way radio systems. Eventually that  
13    portion of GE was sold to Erickson and eventually  
14    Radio Communications Company replaced the original  
15    GE trunked system with a later generation trunked  
16    trunked system manufactured under the name Ericcson  
17    and so originally worked with the GE trunked system  
18    and later the Ericcson trunked system.

19          Q     At Direct Call did you have direct contact  
20    with users?

21          A     Oh, yeah.

22          Q     Can you describe how, please?

1           A     Yeah, wearing my sales manager hat I would  
2     accompany sales manager agents to visit their  
3     customers and often would make sales calls to my  
4     potential customers where we would show the benefits  
5     of using a trunked radio system and so I had that  
6     face-to-face initial contact with the potential  
7     customers. Once they accepted the wisdom of our  
8     advice and acquired the equipment, then I would have  
9     a face-to-face involvement with them as far as  
10    showing them how to use the equipment they had  
11    purchased so we frequently set up a meeting where we  
12    bring in all their employees and actually  
13    demonstrate the use of the equipment and make sure  
14    they knew how to operate it correctly. Additionally  
15    do some revisits if we added new features or new  
16    models came into their fleet of radios and of course  
17    we worked with them on an ongoing basis for any  
18    service related problems or customer service type  
19    problems that might come up.

20           Q     So what type of trunked two-way radio  
21    system was used by Radio Communications Company when  
22    you were with the company?

1 MR. WILLIAMS: Objection, leading.

2 Q You can answer.

3 A Radio Communications Company operated GE  
4 trunking and also known later as Ericcson trunking.

5 Q What type of trunked two-way radio system  
6 did Direct Call use?

7 A The systems that we operated used a format  
8 known popularly as LTR, logic trunked radio, which  
9 was more of an open source type of system, not as  
10 proprietary as the GE system that Radio  
11 Communications was and because the LTR system was  
12 more of a open type system many manufacturers were  
13 building equipment that could operate on the LTR  
14 format of trunking and at Direct Call we used  
15 primarily equipment manufactured by a company called  
16 Kenwood, that was the bulk of the equipment that was  
17 in our systems, and that was also the majority of  
18 the radios that we sold to our customers.

19 Q Did Direct Call use radios from any other  
20 manufacturers?

21 A We were very successful selling radios and  
22 because of that most of the major manufacturers

1 would approach us about wanting us to sell their  
2 equipment on our systems so we had an opportunity to  
3 try out and then actually sell some other brands.  
4 There was some Johnson equipment on our systems.  
5 There was a brand called Standard, we sold some of  
6 that. It eventually changed names to Vertex and we  
7 sold some under the Vertex name, some Motorola, but  
8 any of those other brands were very much in the  
9 minority, most of ours was Kenwood.

10 Q What type of trunked two-way radio systems  
11 does the City of Durham use?

12 A The City's system is a Motorola trunked  
13 radio system. It's called a smart zone version 4.1  
14 trunked system. That is what we call a hybrid  
15 system that can operate with analog radios, which  
16 are the older generation, and also can work with  
17 digital radios, which is the newer generation.

18 Q Has the City of Durham system used any  
19 equipment from manufacturers other than Motorola  
20 since you've been with them beginning in 1997?

21 A Only for the purposes of evaluating the  
22 equipment with the possibility of buying but we

1 ultimately have decided to stay with the Motorola  
2 equipment.

3 Q What other manufacturers' equipment have  
4 you used?

5 A The brand name is E. F. Johnson. They  
6 provided us portable radios and mobile radios to try  
7 out, left them with us for several weeks so we  
8 arranged to have the ability to program those radios  
9 to operate on our system and try them out, but then  
10 eventually return them to the Johnson dealer who  
11 provided them to us to try.

12 Q Based on your experience, are you  
13 personally familiar with the operation of the  
14 Motorola two-way trunked radio devices?

15 A Yes, I use one everyday myself.

16 Q Based on your experience, are you familiar  
17 with the operation of the Kenwood two-way trunked  
18 radio product?

19 A I have a a lot of experience with using  
20 that in my involvement with Direct Call.

21 Q Based on your experience, are you  
22 personally familiar with the operation of the E. F.

1 Johnson two-way trunked radio product?

2 A I have used them on our Durham radio  
3 system during that evaluation that we did on them.

4 Q Based on your experience, are you  
5 personally familiar with the operation of the Vertex  
6 or Standard trunked two-way radio?

7 A Yes, I've used them on the system at  
8 Direct Call.

9 Q Finally, based on your experience, are you  
10 familiar with the operation of the GE Ericcson  
11 trunked two-way radio product?

12 A I am familiar with those radios and have  
13 used them on the systems that Radio Communications  
14 had. I'm also, as I mentioned, my original  
15 involvement with that was while I was under the GE  
16 hat, later Ericcson. Since my involvement with them  
17 Ericcson sold that product line to a company called  
18 Tyco who operates that product under the MAcom name  
19 and we have some MAcom systems in North Carolina and  
20 I have association with the people who use radios on  
21 their systems and in working with them I have some  
22 familiarity with how those radios operate on their

1 systems

2 Q How does a trunked two-way radio system  
3 work?

4 A From the user's point of view trunked  
5 radios, regardless of the system, all appear to do  
6 essentially the same thing and that is prior to  
7 trunking of radio systems a user would typically be  
8 given a radio and assigned to a radio channel or  
9 frequency, for instance, in a city you might have  
10 all of the police officers assigned, given a radio  
11 and they would all use the police channel, the fire  
12 department would have its own channel, Public Works  
13 would have its own channel. So if one policeman  
14 needed to talk to another policeman but there was  
15 already a conversation going on on the police  
16 channel, he would literally just have to wait for  
17 the channel to become available before he could  
18 conduct his conversation. Even though the fire  
19 channel and the Public Works channel might be  
20 sitting over here completely quiet they were  
21 unavailable to him. He was waiting in line.  
22 Reminds me of the experience you go to a fast food

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1 restaurant or grocery store and you get in a line  
2 and a cash register opens up down here but you can't  
3 take advantage of it because you're already locked  
4 into this line over here. Some of the banks  
5 eventually saw the wisdom of putting up little ropes  
6 where everybody gets in one line and goes to the  
7 next available teller. That's the same advantage  
8 you get with trunking.

9           So a city might have five or 10 or 20 or  
10 in the case of Durham 21 channels and we have all of  
11 the users waiting in line for an available channel  
12 so even though there might already be a police  
13 conversation going on, a police officer needing to  
14 talk to another police officer can ask the system to  
15 give him a channel to talk on and the trunked system  
16 has a computer intelligence to it that can recognize  
17 the fact that he asked for the ability to have a  
18 conversation and it will assign that to an available  
19 channel so you get much more use of the channels  
20 that the city owns than you would under the old  
21 system.

22           So a trunked radio user tells the system



1 he wants to have a conversation by doing the  
2 pressing of the push-to-talk button on his radio.  
3 The system sees that action on his part and  
4 interprets that as being a request to conduct a  
5 conversation. The system then looks to see if a  
6 channel is available. If it does find that there is  
7 in fact a channel available it then responds to his  
8 radio and tells the radio to move on to that  
9 available channel. The system then let's the  
10 end-user know that that process has happened by  
11 causing his radio to emit an electronic sound that  
12 gives him a feedback that he has successfully gained  
13 a channel and the ability to have a conversation.

14 In the event that for any reason the  
15 system can't find an available channel or there's  
16 some other technical reason why it cannot provide  
17 him the ability to talk, he'll get a different  
18 audible feedback letting him know that it's been an  
19 unsuccessful attempt to start the conversation.

20 Q Do all two-way trunked radio systems work  
21 this way or just Motorola?

22 MR. WILLIAMS: Objection, leading, go ahead and

1 answer.

2 A From the user's point of view all the  
3 trunked systems do work in that fashion. What's  
4 going on behind the scenes that the user's totally  
5 unaware of may be different technically how the  
6 system achieves what the user sees or perceives but  
7 the perception of using a trunking system is  
8 basically the same regardless of the type of system  
9 they use.

10 MR. WILLIAMS: Objection, that was an opinion.  
11 Lack of foundation, speculation.

12 Q In your experience do two-way trunked  
13 radios emit signaling tones other than the two that  
14 you've just described?

15 A Oh, yeah. The various radios, the brands,  
16 and regardless of what type of system they're  
17 operating on, the radios are designed to provide the  
18 user with an audible alert that will vary depending  
19 on exactly what the radio's attempting to alert the  
20 user to. So there might be one recognizable tone  
21 that the user comes to learn means my battery's  
22 weak, I need to exchange batteries or go charge my

1 battery. There might be a unique note that says  
2 you're out of range of the system, you can't talk  
3 from here. And then of course you get that  
4 ready-to-talk tone when you successfully activate  
5 the system, you get a failed to connect sort of a  
6 bonk if you don't get the system when you ask for.  
7 There are various tones that the user learns to  
8 interpret associated with various functions that the  
9 radio's attempting to alert him to.

10 Q Just to be clear, you referred to the tone  
11 that's emitted when a channel is successfully opened  
12 or selected as a ready-to-talk tone; is that right?

13 A That's what I call it.

14 MR. WILLIAMS: Objection, leading.

15 A When I am instructing somebody on how to  
16 use their radio that's the way I've always described  
17 it to them. It's just a term that I use. I may  
18 have picked it up somewhere, but other people may  
19 call it something different, but it's that little  
20 beep you get when you successfully connect to the  
21 trunked system.

22 Q How do you refer to the tone that is

1 emitted when the connection is unsuccessful?

2 A I'll use a phrase like the fail-to-connect  
3 tone or I use the -- I refer to it as the bonk. I  
4 tell the users when we're training them you'll get  
5 this ready-to-talk beep or you'll get a bonk letting  
6 you know that you didn't.

7 MR. WILLIAMS: Objection, that's hearsay.

8 Q Are you familiar with the signaling tones  
9 emitted by all of the, I'm sorry. Are you familiar  
10 with the signaling tones emitted by the trunked  
11 two-way radio products manufactured by all of the  
12 manufacturers with which you've had direct  
13 experience?

14 A I am familiar with the fact that they all  
15 make the tones. I couldn't necessarily identify one  
16 like some people identify bird calls of a particular  
17 bird. But partly that is because the tone's just a  
18 very short little beep or chirp or whatever. When  
19 you press it and so it's not all that unique or  
20 distinctive you get a beep and you know it worked.

21 Q Do all of the trunked two-way radios which  
22 you've had direct experience from the different

1 manufacturers emit a ready-to-talk tone?

2 A Yes.

3 Q Do all of those radios emit a bonk tone?

4 A Yes.

5 Q Why do you say that?

6 MR. WILLIAMS: Objection, calls for  
7 speculation.

8 A The manufacturers apparently recognize  
9 that the user needs that audible feedback in order  
10 to efficiently use the radio. If you get the beep  
11 you know you're not going to waste your time  
12 talking. The assumption when you hear the beep is I  
13 have connected. If you get the bonk you know to  
14 pause and try again. The radio sometimes may want  
15 to tell you other things like my battery's dying and  
16 even though it might have a visual indication of  
17 that if you're not looking at the radio when that  
18 takes place the radio needs some way of drawing your  
19 attention to the radio so you will look at it so the  
20 radios use these audible beeps and noises to draw  
21 your attention to what the radio's trying to tell  
22 you.

1 MR. WILLIAMS: Objection, that was speculation,  
2 lack of foundation and included opinion testimony.

3 Q Are there any differences among the  
4 ready-to-talk tones that are emitted by the two-way  
5 trunked radios sold by the manufacturers with which  
6 you have direct experience?

7 A Yes.

8 Q Would you explain, please?

9 A A couple of examples. For instance, a  
10 Kenwood trunked radio when you push the talk button  
11 if it successfully connects it gives you a beep, a  
12 steady one tone beep. A Motorola trunked radio  
13 gives you a sound that I would describe as a chirp.  
14 So those two radios I do know for a fact have a  
15 different sound. It's very short but it is  
16 different.

17 Many of the radios though have a sound  
18 that is at least so similar that I don't perceive a  
19 difference. So, for instance, Johnson radios,  
20 Vertex, Standard, Kenwood, those radios in my  
21 experience has been that they tend to make a beep  
22 that is very, very similar and I doubt that I could

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1 tell you one of them was being used as opposed to  
2 another one just based on the sound that it made.

3 Q Do you have any direct experience as to  
4 users' response to different tones, different  
5 ready-to-talk tones, from different manufacturers?

6 A My experience has been that the users do  
7 not appear to concern themselves with the specifics  
8 of the sound but just the fact that they get the  
9 sound. If you press the button you get a beep of  
10 some kind, you recognize that you have made a  
11 successful connection or if you get a sound I would  
12 describe as a bonk they know that they've not made a  
13 successful connection. I have never had a user of a  
14 two-way radio make any particular -- any remark of  
15 any kind about the actual sound that's made. I have  
16 actually had users who have used various brands of  
17 radios all within the same company or group of  
18 radios and going from one brand to another brand  
19 there's no problem on their part about recognizing  
20 the tones for the function that they're providing an  
21 indication of they seem to be. My experience has  
22 been that those users can use a Kenwood radio this

1 morning, use a Vertex radio this afternoon, for  
2 instance, and the tones seem to be intuitive to  
3 them.

4 MR. WILLIAMS: Objection, that answer included  
5 hearsay, included speculation. There was a lack of  
6 foundation and it was also a narrative response.

7 Q Were you in a position at Direct Call to  
8 become aware of user complaints about inability to  
9 use particular models when they were in a situation  
10 in which they had multiple manufacturers?

11 A That's never been an issue.

12 Q Were you in a position to receive  
13 complaints?

14 A Oh, yes. If any of our customers had any  
15 issue using one radio versus another I would  
16 probably be the first person they would have called.

17 MR. WILLIAMS: Objection, that question called  
18 for hearsay.

19 Q While you were with Direct Call were there  
20 customers of Direct Call who had fleets of two-way  
21 radios in which they were simultaneously using  
22 trunked two-way radios from multiple manufacturers?



1           A     Yes.

2           Q     Did you ever receive a complaint from any  
3     users about their inability to interpret the  
4     ready-to-talk tones emitted by the different  
5     manufacturers' radios?

6           MR. WILLIAMS:  Objection, that calls for  
7     hearsay.

8           A     No, I did not.

9           MR. WILLIAMS:  Objection as hearsay.

10          Q     Are there any systems among the  
11     ready-to-talk and bonk tones emitted by trunk  
12     two-way radio devices from different manufacturers?

13          MR. WILLIAMS:  Objection leading.

14          A     Yeah, they're all electronic sounds,  
15     electronic -- they're generated by electronics not  
16     tuning forks or bells or anything like that.  
17     They're all electronic sounds generated by the  
18     chips, integrated circuits, in the radio.  They're  
19     all very short in duration which is important, you  
20     don't want time wasted for the user by listening to  
21     music, you want a quick response.  And then there's  
22     amongst the various sounds that the radio makes

1   there's enough uniqueness in those various tones for  
2   the user to be able to interpret the fact that he  
3   got this tone versus this tone.

4           Q     And in particular is there any -- are  
5   there any similarities among the ready-to-talk and bonk  
6   tones that are emitted by trunk two-way radio  
7   products manufactured by different companies?

8           MR. WILLIAMS:  Objection, calls for  
9   speculation.

10          A     There is similarity from brand to brand in  
11   the fact that you do have to provide the same basic  
12   functional requirements to the user regardless of  
13   what brand of equipment you put in his hand.  So a  
14   fireman or policeman pressing the button regardless  
15   of what brand of radio he needs he still has the  
16   same need to know that that communications did  
17   initiate or fail to initiation, so regardless of  
18   what brand of equipment they're using they have to  
19   be provided that functionality.

20          MR. STEWART:  If we could have a five minute  
21   break.  Off the record.

22                               (Off the record)

1 BY MR. STEWART:

2 Q Mr. Rasmussen, who actually built the  
3 trunked system that was used by Direct Call?

4 A I did during the period of time that I was  
5 employed there using equipment provided from various  
6 manufacturers.

7 Q And during the time you were with Direct  
8 Call, 1994 to 1997, how many employees of Direct  
9 Call were responsible for receiving complaints from  
10 users?

11 A I was the only employee of Direct Call  
12 that received complaints from our customers, the  
13 users.

14 Q You said earlier that the City of Durham  
15 has tested E. F. Johnson radios as part of its  
16 Motorola based system; is that correct?

17 A Correct.

18 MR. WILLIAMS: Objection leading.

19 Q Who in the City of Durham would be  
20 responsible for receiving and dealing with  
21 complaints from users about the operation of the  
22 system?

1           A     Myself.

2           Q     Did you receive any complaints from users  
3 with regard to the ready-to-talk tone emitted by the  
4 E. F. Johnson product while it was under test by the  
5 City?

6           A     No.

7           MR. WILLIAMS:  Objection, calls for hearsay.

8           Q     Your answer is?

9           A     No.

10          MR. STEWART:  I have no further questions at  
11 this time.

12       BY MR. WILLIAMS:

13          Q     First I'd like to object to Rasmussen  
14 Exhibit 1.  Discovery is now closed.  This document  
15 was not produced to us during discovery and it's  
16 responsive to Motorola's document request.

17                Next I'd also like to object to  
18 Mr. Rasmussen's testimony here today.  Mr. Rasmussen  
19 was not disclosed in Nextel's discovery responses as  
20 having any knowledge in this case including on  
21 topics where he provided testimony here today, for  
22 example, Interrogatory Number 1 called for

1 identification of witnesses who were knowledgeable  
2 regarding applicant's use of the marked  
3 interrogatories number 2 and 3, called for  
4 identification of witnesses knowledgeable regarding  
5 the distinctiveness of applicant's mark.  
6 Interrogatory Number 4 called for identification of  
7 witnesses who are knowledgeable regarding users of  
8 applicants' products and there were other  
9 interrogatories in the document request to which  
10 this witness's testimony was relevant.

11 Secondly, Motorola further objects because  
12 due to Nextel's failure to disclose Mr. Rasmussen  
13 Motorola was unable to conduct discovery of  
14 Mr. Rasmussen prior to today's testimony deposition.  
15 If we could take a short break, I'll prepare my  
16 cross.

17 MR. STEWART: Thanks.

18 (Off the record)

19 BY MR. WILLIAMS:

20 Q We'll go back on the record,  
21 cross-examination of Mr. Rasmussen. Mr. Rasmussen,  
22 you're not here pursuant to a subpoena today,

1 correct?

2 A Correct.

3 Q Your employer, the City of Durham, didn't  
4 pay your travel costs to come up here, did they?

5 A No.

6 Q Nextel paid your travel costs, correct?

7 A I don't actually -- as far as I'm  
8 concerned they're paying it.

9 Q They being Nextel's counsel?

10 A Right.

11 Q You pointed to Mr. Stewart, Nextel's  
12 counsel?

13 A Yeah, the firm here.

14 Q Who first approached you about providing  
15 testimony in this case?

16 A I think Mr. Stewart left me a voicemail  
17 and I returned his call is my recollection.

18 Q Did you exchange any e-mails with  
19 Mr. Stewart?

20 A About the travel arrangements I know we  
21 did.

22 Q About anything else?

1           A     I don't recall any e-mail until we were --  
2     just had an e-mail exchange about travel  
3     arrangements.

4           Q     Did you meet with Mr. Stewart or other  
5     Nextel lawyers prior to providing testimony here  
6     today?

7           A     Yes.

8           Q     When did you do that?

9           A     Last week, I met with both of them for  
10    about two hours.

11          Q     Where did that meeting take place?

12          A     In Raleigh, North Carolina.

13          Q     What did you talk about?

14          A     Just they asked me questions about my  
15    knowledge about the trunked radio systems and the  
16    equipment in general.

17          Q     Did you provide any documents to them?

18          A     No. At that time?

19          Q     Yes.

20          A     No.

21          Q     Prior to that meeting did you provide any  
22    documents?

1 A No.

2 Q After that meeting or even today did you  
3 provide counsel with any documents?

4 A This resume I did provide them today.

5 Q Exhibit 1?

6 A Uh-huh.

7 Q Did you sign a release or any papers  
8 relating to a protective order in this case?

9 A No.

10 Q Did Nextel or Nextel's lawyers provide you  
11 with any documents to review prior to today's  
12 testimony?

13 A No.

14 Q Did you meet with any or have any  
15 conversations or e-mails with anyone from Nextel  
16 apart from the lawyers in connection with this case?

17 A No, I did not.

18 Q Did you need to use any vacation time to  
19 come here to provide testimony?

20 A I did use a vacation day today.

21 Q Did the lawyers ask you to look through  
22 your files for any relevant papers for this case?



1           A     No.

2           MR. WILLIAMS: That's all I have.

3           MR. STEWART: I have no further questions on  
4 redirect, so that terminates the deposition.

5                     (Reading and signing was waived)

6                     (2:35 p.m. the deposition was concluded)

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1 I, TEAGUE GIBSON, the officer before whom  
2 the foregoing deposition was taken, do hereby  
3 certify that the witness whose testimony appears in  
4 the foregoing deposition was duly sworn by me; that  
5 the testimony of said witness was taken by me in  
6 stenotypy and thereafter reduced to typewriting  
7 under my direction; that said deposition is a true  
8 record of the testimony given by said witness; that  
9 I am neither counsel for, related to, nor employed  
10 by and of the parties to the action in which this  
11 deposition was taken; and, further, that I am not a  
12 relative or employee of any counsel or attorney  
13 employed by the parties hereto, nor financially or  
14 otherwise interested in the outcome of this action.

15 

16 Teague Gibson

17 Notary Public in and for  
18 the District of Columbia

19  
20 My commission expires:  
21 June 14, 2010

22

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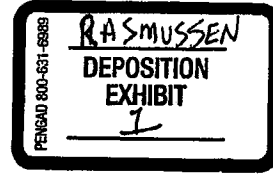


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70s 10:21			

## RASMUSSEN DEPOSITION EXHIBIT 1

Nextel Communications v. Motorola, Inc.,  
Opp. No.: 91/161,817  
App. No.: 78/235,618  
Mark: Sensory Mark (911 Hz tone)

**Henrik "Rik" Rasmussen II**  
1031 Jones Wynd  
Wake Forest, NC 27587  
(919) 556-7137



**Professional Experience**

**City of Durham, NC**

**1997- present**

**Radio System Manager**

Manage division of city government with six employees.  
Manage city/county Public Safety radio system, inventory, and maintenance.  
Prepare annual division budget.  
Created and presented plan for \$8,000,000 radio system improvement.  
Developed and implemented training program.

**Direct Call, Inc., Durham, NC**

**1994 – 1997**

**General Manager/Sales**

Recruited, trained and managed sales force for wireless company.  
Ensured overall company profitability and growth.

**Audiovox Corp., Raleigh, NC**

**1990 – 1994**

**Regional Sales Manager**

Located sites, recruited staff, and managed 120 cellular telephone outlets in a ten state region.  
Managed a region of 350 employees with area managers and store managers.

**Cellular One of the Triangle, Raleigh, NC**

**1988 – 1990**

**Sales Manager**

Developed original sales program through direct sales force and dealer network.  
Recruited, hired, and directed activities of a staff of 26 sales employees.

**Radio Communications Company, Cary, NC**

**1986 – 1988**

**Sales Manager**

Recruited, trained and managed sales force.

**Direct – Connect, Inc., Durham, NC**

**1983 – 1986**

**President**

Founded business selling and servicing two-way radio, cellular telephone and office phone equipment.

Sold business to Radio Communications Company

### **Education**

Bachelor of Science in Computer Information Systems    Summa Cum Laude    2000  
N. C. Wesleyan College

Bachelor of Science in Business Administration    Summa Cum Laude    1998  
N. C. Wesleyan College

**References available on request.**

### **Other interests**

Served as Club President, Area Governor, and Division Governor in Toastmasters International.

Lead a monthly meeting of the Raleigh Vector Vest Users Group, discussing stock market analysis and investment strategies.

Operate a web site [twowayradiodirectory.com](http://twowayradiodirectory.com) a profitable industry directory.

Moderate several very active web forums including Stockanalyzer and Bestcharts Yahoo Groups, each with over 1,000 members for discussion of stock and fund market technical analysis.

**Henrik "Rik" Rasmussen II**

# RASMUSSEN DEPOSITION ERRATA SHEET

Nextel Communications v. Motorola, Inc.,  
Opp. No.: 91/161,817  
App. No.: 78/235,618  
Mark: Sensory Mark (911 Hz tone)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEXTEL COMMUNICATIONS, INC.,

Opposer,

v.

MOTOROLA, INC.,

Applicant.

Opposition No.: 91161817

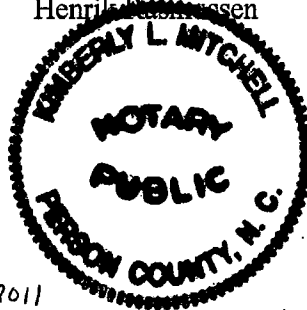
App. No.: 78/235,618

Mark: SENSORY MARK  
(911 Hz tone)

I, Henrik Rasmussen, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken August 24, 2006, that I have read the foregoing transcript of the deposition, consisting of pages 1 to 38 inclusive, and affix my signature to same.

Henrik Rasmussen  
Henrik Rasmussen

Subscribed and sworn to  
Before me this 1<sup>st</sup> day of  
November, 2006



Kimberly L. Mitchell  
Notary of Public My commission exp. April 14, 2011

CASE: Nextel Communications, Inc. v. Motorola, Inc.  
DEPONENT: Henrik Rasmussen  
DATE TAKEN: August 24, 2006

[illegible]

(SIGNED) \_\_\_\_\_ DATE \_\_\_\_\_

**REPORTER:** Teague Gibson